IN THE

Supreme Court of the United States

OCTOBER TERM, 1976-1977

No. 77-87

KAMA CORPORATION,

Petitioner,

vs.

LOCAL NO. 1561, U.A.W. AND INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Petitioner prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Third Circuit, in an action entitled *Kama Corporation, Appellant v. Local No. 1561, UAW and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Appellees.*

CITATIONS TO OPINIONS BELOW

The opinion of the Arbitrator J. A. Raffaele *In the Matter of the Arbitration between United Automobile Workers, Local 1561 and Kama Corporation* rendered December 23, 1975 is unreported and is printed in Appendix A hereto, *infra* pp. 1a-7a. The memorandum and order of the United States District Court for the Eastern District of Pennsylvania is reported at ..... F.Supp. ..... (E.D.Pa. 1976) and is printed in Appendix B hereto, *infra* pp. 8a-11a.

The Judgment Order of the United States Court of Appeals for the Third Circuit dated May 4, 1977 affirming the opinion and order of the United States District Court is reported at ..... F.2d ..... (3d Cir. 1977) and is printed in Appendix C hereto, *infra*, pp. 12a-13a. The Judgment Order was reissued on May 26, 1977 in lieu of the mandate of the court. By Order dated June 16, 1977 the mandate of the Court was recalled and stayed until July 14, 1977 and is reported at ..... F.2d ..... (3rd Cir. 1977) and is printed as Appendix D hereto, *infra*, p. 14a.

JURISDICTION

The jurisdiction of the Court is invoked under 28 U.S.C., Section 1254(1) (1966).

QUESTIONS PRESENTED

I.

Is the judgment of the United States District Court for the Eastern District of Pennsylvania, as affirmed by the United States Court of Appeals for the Third Circuit, in error in that it affirmed an award which was in violation of the terms of the collective bargaining agreement and, as such, in excess of the Arbitrator's authority under the collective bargaining agreement and the submission of the parties?

II.

Is a standard of review which affirms an Arbitrator's award that is in excess of both the Arbitrator's authority and the submission of the parties adequate under the standards enunciated in *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960)? Does such a standard of review provide due process of law to the party seeking meaningful judicial review of such awards?

III.

Have the various Circuit and District Courts interpreted the decision in *United Steelworkers of America v. Enterprise Wheel and Car Corp., id.*, in such a diverse and inconsistent manner as to require this Court to clarify, correct and cause to be applied a uniform standard for the review of labor arbitration awards?

STATUTE INVOLVED

The statutory provision involved is Section 301 of the Labor Management Relations Act of 1947, as amended, 61 Stat. 156, 29 U.S.C., Section 185 and is printed as Appendix G hereto, *infra*, pp. 23a-24a.

STATEMENT OF THE CASE

The petition seeks a review of the Judgment Order of the United States Court of Appeals for the Third Circuit which affirmed a Memorandum and Order of the United States District Court for the Eastern District of Pennsylvania enforcing the Opinion and Award of Arbitrator J. A. Raffaele in an arbitration between Petitioner, Kama Corporation (hereinafter "Kama") and Respondent, Local No. 1561, UAW, etc. (hereinafter the "Union").

a) Contractual Provisions.

Kama and the Union were parties to a collective bargaining agreement effective January 19, 1973 through and including December 1, 1975 which provided a procedure for resolving "differences arising between Kama and the Union" culminating in arbitration. The collective bargaining agreement in Article IV, Section 1E limited the Arbitrator's authority to the following extent:

> "The arbitrator is empowered to hear and determine disputes only in respect to the interpretation and application of the particular clauses of this Agreement, and the alleged violations of this Agreement. The arbitrator shall have no power to add to, subtract from or modify any of the terms of this Agreement; . . . or to hear or determine any issue involving the functions of Management. . . ."

Those functions of management specified in Article III of the collective bargaining agreement included:

> "the sole right and responsibility . . . to make and apply rules and regulations for production, discipline, efficiency and safety. . . . the right and responsibility to demote, discharge or otherwise discipline an employee for just cause (just cause includes but is not limited to absenteeism or violation of other Company rules; . . . unless otherwise herein provided."

Additionally, Article VI entitled "Leaves of Absence" in Section 3 provided:

> "Any Employee who claims to be ill and requests a sick leave of absence from the COMPANY and, in support of this claim presents a satisfactory evidence of his incapacitation, shall be granted such leave not in excess of thirty (30) days. If the illness continues beyond thirty (30) days, such leave may be extended with the approval of the Company."

Lastly, Article VII, Section 6 of the collective bargaining agreement provides:

> "Seniority shall be lost for any one of the following reasons: . . . E. When an Employee overstays his leave of absence without a reason satisfactory to the COMPANY."

b) The Curney Discharge

On or about May 10, 1975 Curney, an employee of Kama, entered a hospital for approximately one week. On June 29, 1975 he reported in to Kama presenting a medical certificate indicating his return to work would be August 11, 1975. On July 1, 1975 Curney was informed by letter of his termination for the reason he had overstayed his thirty-day sick leave, no extension having been sought or granted under Article VI, Section 3 (hereinafter referred to as the "sick leave clause"). On July 21, 1975 a grievance was filed on behalf of Curney challenging the "unjust termination of the above named Employee [Charles Curney]." The section of the collective bargaining agreement alleged to have been violated was Article VI, Section 3. (The grievance is printed in Appendix E hereto, *infra*, p. 15a) On October 30, 1975, the matter went to trial before Arbitrator Raffaele. Testimony was given under oath and a transcript of the hearing taken which was extensively quoted in the Arbitrator's award. (Appendix A hereto, *infra*) Pertinent portions of the transcript omitted from the award are printed in Appendix F hereto, *infra*, pp. 16a-22a.

The Arbitrator found that the sick leave clause required Kama to grant a thirty-day sick leave upon demonstration of incapacitation leaving "an extension of the sick leave to the discretion of the Company." (Appendix A *infra*, p. 6a) The Arbitrator reinforced this proposition by reiterating Kama had the "sole discretion" in extending sick leave beyond the mandatory thirty days. (Appendix A *infra*, p. 7a) Nonetheless, the Arbitrator held "the evidence indicates the Company terminated the employee because of a record of absenteeism" (Appendix A, *infra*, p. 7a), although he had excluded all such evidence from the hearing. (Appendix F, *infra*, pp. 20a, 23a) The Arbitrator held

Kama could not "use the sick leave clause to discharge for cause when a more appropriate clause exists for such action." (Appendix A, *infra*, p. 7a) Thus Curney was reinstated, but without back pay.

Kama sought to vacate the award by filing an action under 29 U.S.C. 185 in the United States District Court for the Eastern District of Pennsylvania asserting, *inter alia*, that the Arbitrator's award exceeded his authority when it violated the explicit terms of the collective agreement. The court, nonetheless, upheld the Arbitrator's award relying on *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960), *Ludwig Honold Mfg. Co. v. Fletcher and United Auto Workers, Local 416*, 405 F.2d 1123 (3rd Cir. 1969), and *Aloha Motors, Inc. v. I.L.W.U. Local 142*, 530 F.2d 848 (9th Cir. 1976).

REASONS FOR GRANTING A WRIT OF CERTIORARI

Kama urges this Court to review, to clarify and to correct the misapplication of its decision in *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960). Kama's plight in this case is characteristic of the epidemic of imprecise and erroneous arbitration awards which usually gain judicial affirmance.

The record in this matter reveals the Third Circuit and the District Court grossly misapplied the decision in *Enterprise Wheel and Car, supra.* More importantly, the standards for review of an arbitrator's award as enunciated by various Circuit and District Courts have

become so diverse as to render a uniform and meaningful review of such awards illusory.

The Arbitrator was forbidden by Article IV, Section 3:

> "to add to, subtract from or modify any terms of [the] Agreement; . . . or to hear or determine any issue involving the functions of Management. . . ."

The grievance—as filed, as submitted to the Arbitrator, and as stated by the Arbitrator at the hearing—involved only the propriety of the termination of Curney under the sick leave clause. The Arbitrator took testimony on the bargaining history, meaning, and application of this clause. The Union, at the arbitration hearing, admitted through its representative:

> "Now, it's true the Company has a right—may have a right to terminate an employee if an employee doesn't present any evidence within that thirty day period." (Appendix A *infra*, p. 4a)

Kama vigorously asserted at the arbitration that they had exactly that right; any extension beyond the thirty day sick leave was a sole and exclusive function of management as provided in the sick leave clause and protected by the arbitration provisions, Article IV, Section 1E.

The Arbitrator affirmed Kama's assertions, stating the sick leave clause:

> "[M]andates a thirty-day grant of such leave if incapacitation is demonstrated and leaves an extension of sick leave to the discretion of the Company if the illness goes beyond the thirty days." (Appendix A *infra*, p. 6a)

Moreover, the Arbitrator later unequivocally held:

> "[T]he sickness clause grants the Company the *sole discretion* in extending the sick leave. . . ." (Appendix A, *infra*, p. 7a) [Emphasis supplied.]

Nonetheless, the Arbitrator overturned the termination and restored Curney to his job, justifying this action on the grounds that Kama:

> "[T]erminated the employee because of a record of absenteeism." (Appendix A, *infra*, p. 7a)

The Arbitrator went on:

> "[T]he Company cannot use the sick leave clause to discharge for cause when a more appropriate clause exists for such action." (Appendix A, *infra*, p. 7a)

The Arbitrator's award is grounded on testimony which he excluded. His award defies reason, beggars sound arbitral practice, exceeds the submission of the parties, and manifests a total infidelity to the Arbitrator's obligations under the collective bargaining agreement.

> Q. *By Mr. Cohn* [for Kama]: How long have you worked in the plant?
> A. *By Mr. Curney* [the Grievant]: I started . . . September 21, 1972.
> Q. Did you have any illness or accidents in that period of time?
> A. Yes.
> Q. How many?
> A. How many?
> Q. If you can remember.
> A. A few. I can't really recall.
> Q. Was there any time when you were out for more than a day?
> A. Yes. . . .
> Q. How long were you off?
> *By Mr. Palega:* [for the Union]: Mr. Arbitrator, I object to that kind of questioning. It's irrelevant.
> *By Mr. Cohn:* I think his work record is relevant.
> *By the Arbitrator:* In what way is it relevant?
> *By Mr. Cohn:* Well, his work record and his periods of illness prior to this time are a relevant consideration to determine what our opinion or decision would be.

* * *

By the Arbitrator: The issue as initially constructed in this arbitration was the propriety of termination under the leave of absence clause and the Union so far has addressed itself in its testimony to that issue. The cross-examination is moving in the direction of testimony which was not presented on direct examination, so I sustain the objection of the Union. (Appendix F, *infra*, pp. 18a-20a)

Later in the arbitration the subject of Curney's work record again arose:

By Mr. Cohn: At this point . . . I would like to develop with Mr. Graham [the president of Kama] the work record of Mr. Curney. However, there is an objection and there is a ruling on it. I just don't want to waste time.

By Mr. Palega: I think the ruling has been rendered previously.

By the Arbitrator: May I ask for clarification as to what the Company counsel means by his "work record"?

By Mr. Cohn: The record of injuries, illnesses, prior to May of 9175.

By the Arbitrator: Consistent with any previous ruling, I would object to that testimony. (Appendix F, *infra*, p. 20a)

Later in the hearing the subject of Curney's attendance record arose. During the course of an answer regarding when Kama actually terminated Curney and whether such action was reasonable Mr. Graham stated:

A. [By Mr. Graham] . . . Curney's work record was spotty; his attendance record was fair to poor.

By Mr. Palega: I object. That has nothing to do with the instant case. The [Arbitrator] ruled before about the work record and yet you insist upon bringing his work record into the picture.

By the Arbitrator: Your objection is sustained and I would like that portion of the testimony be be stricken from the record. (Appendix F, *infra*, p. 22a)

Nonetheless, when the Arbitrator awarded Curney reinstatement he did so because Kama terminated Curney "because of a record of absenteeism." (Appendix A, *infra*, p. 7a)

Mr. Justice Douglas, writing for this Court in *Enterprise Wheel and Car, supra*, stated:

> "When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear on a fair solution of a problem . . . ; he does not sit to dispense his own brand of industrial justice. . . . [H]is award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award. (363 U.S. at 597)

The U.S. Court of Appeals for the Third Circuit, in 1969, attempted to enunciate its own standard for reviewing arbitrators' awards in *Ludwig Honold Mfg. Co. v. Fletcher and United Auto Workers, Local 416*, 405 F.2d 1123 (3rd Cir. 1969). Judge Aldisert, writing for the Court, stated:

> "*Enterprise* enunciated a basic philosophy that was to apply to all labor arbitration cases. It elevated the arbitrator to an exalted status—emphasizing that there would be no interference with his award simply because a reviewing court differed with him in the interpretation of provisions of the contract. At the same time it held a checkrein on him—confining his zone of action to the four corners of the collective bargaining agreement. Although the language setting forth these guidelines was precise and uncomplicated, one problem has emanated from the cases which have followed *Enterprise*: that of formulating a consistent and workable standard to be utilized by courts in exercising the function of review. Circuit and District Court decision *have not exuded uniformity* in

translating the 'essence' test into a pronouncement of the appropriate extent or limitation of judicial review of the arbitrator's interpretation.

Each case seems to have fashioned its own standard . . . ." 405 F.2d at 1126. [Emphasis Supplied].

Thus, Judge Aldisert noted standards varied from Circuit to Circuit, some holding Arbitrators awards should not be disturbed so long as they were not arbitrary[1] or even though there was an inference the arbitrator may have exceeded his authority[2] or merely because the court believed sound legal principles were not applied.[3] Other courts had taken the opposite approach stating only when they would overturn awards as where the Arbitrator went beyond the scope of his submission,[4] where the authority for the award could not be found or legitimately assumed from the contract[5] or if the Arbitrator made a determination unrequired to resolution of the dispute.[6] Judge Aldisert went on to note some decisions which suggested there could be no review whatsoever of Arbitrator's contractual interpretations. 405 F.2d at 1126.

Thus, the Third Circuit set down its own and yet another standard stating:

---

[1] Local 7-644, Oil Chemical & Atomic Wkrs. Int. U. v. Mobil Oil Co., 350 F.2d 708, 712 (7th Cir. 1965).

[2] Brotherhood of Rail. Train. v. St. Louis Southwestern Ry. Co. 220 F. Supp. 319, 325 (E.D. Tex. 1963).

[3] Dallas Typographical Union v. A.H. Belo Corp., 372 F.2d 577, 581 (5th Cir. 1967).

[4] Textile Workers Union of America v. American Thread Co., 291 F.2d 894, 897-898 (4th Cir. 1961).

[5] Truck Drivers and Helpers Local 784 v. Ulry-Talbert Co., 330 F.2d 562, 563 (8th Cir. 1964).

[6] Socony Vacuum Tankers Men's Ass'n v. Socony Mobil Oil Co., 369 F.2d 480, 483 (2d Cir. 1966)

"Accordingly, we hold that a labor arbitrator's award does 'draw its essence from the collective bargaining agreement' if the interpretation can *in any rational way* be derived from the agreement, viewed in the light of its language, its context, and any other indicia of the parties' intention; only when there is a manifest disregard of the agreement, totally unsupported by principles of contract construction and law of the shop, may a reviewing court disturb the award.[27]"

"[27] We recognize this is only one of several possible grounds for vacating an award deemed to be arbitrable. An award may be vacated where it is shown there was fraud, partiality or other misconduct on the part of the arbitrator (citation omitted); or where the award violates a specific command of some law—usually The National Labor Relations Act (citation omitted); or because the award is too vague and ambiguous for enforcement (citation omitted); or because of inconsistency with public policy (citation omitted) . . . ." 405 F.2d 1123, at 1128. [Emphasis Supplied]

Careful note must be taken of two propositions set forth in *Fletcher:* (1) There was hardly any uniformity among the Circuit and District Courts in the standards used to review Arbitrator's awards; and (2) the Third Circuit enunciated yet *another* standard in addition to those already set forth. The unfinished odyssey of the unsettled standard of review that courts accord labor arbitration awards continues to date and without substantial uniformity.

In the instant matter, the Third Circuit altered and softened the standard set forth in *Fletcher* by affirming the District Court decision which adopted the test of the Ninth Circuit in *Aloha Motors, Inc. v. I.L.W.U. Local 142*, 530 F.2d 848, 849 (9th Cir. 1976). Now the Third Circuit no longer requires a "rational" basis to uphold an Arbitrator's award. The decision need only be based on "a

plausible interpretation of the contract." Appendix B, *infra*, p. 9a. The Third Circuit now says, in effect, an award no longer has to exercise reason, sound judgment or good sense; it need only have the appearance of truth or reason or be seemingly worthy of approval. Such a standard of review is so vague and unprecise as to permit affirmance of virtually any and all arbitration awards and is contrary to the standard of review mandated by *Enterprise Wheel and Car*.

Decisions of Circuit Courts do exist which set forth workable standards. In *Textile Workers Union of America v. American Thread Co.*, 291 F.2d 894 (4th Cir. 1961) an Arbitrator had grossly exceeded the submission agreement with the result the award was diametrically opposed to that required by clear contractual language. The court stated:

> "We are not persuaded that the Supreme Court . . . intended that the Courts should permit an arbitrator to render decisions which do such violence to the clear, plain and exact and unambiguous terms of the submission and the contract of the contending parties." 291 F.2d at 899.

A similar standard was recently affirmed by the Fourth Circuit in *Western Electric Company, Inc. v. Communication Equipment Workers*, ... F.2d ..... (95 LRRM 2268) (4th Cir. 1977) which held that the role of the courts under *Enterprise Wheel and Car* was to ascertain if there were facts to support both the award and that the Arbitrator had not exceeded the scope of the submission made by the parties . . . . F.2d ....., ...; 95 LRRM at 2270.

An agreement to arbitrate is, *a fortiori*, an agreement to be bound by the Arbitrator's award provided, of course, that the award is within the Arbitrator's

authority. Due process of law requires that Arbitrator's awards be subject to meaningful judicial review. Otherwise, there is no safeguard against an arrogation of power by the Arbitrator and the concomitant license to run riot over the terms of the collective bargaining contract he is charged to faithfully construe. The absence of meaningful judicial review creates a vacuum which denies due process of law and is repugnant to the basic tenets of judicial order.

Here as in countless other cases, the Arbitrator ignored the submission which was limited to an application of the sick leave clause with its unequivocal language and ruled that another section of the contract governed the dispute. The basis for the Arbitrator's award was grounded upon testimony which he had excluded. Such an award is outrageous, and the District Court and Circuit Court should not be permitted to lend their imprimatur to it. Arbitrators have no license to dispense their own brand of industrial justice. Rather, as Chief Judge Lumbard, writing for the Second Circuit in *Torrington Company v. Metal Products Workers Union, Local 1645*, 362 F.2d 677 (2d Cir. 1966), stated:

> "[T]he Arbitrator's authority to render a given award is subject to *meaningful* [judicial] review." 362 F.2d at 180. [Emphasis supplied]
>
> * * *
>
> "Far from having the disruptive effect upon the finality of labor arbitration when courts review the 'merits' of a particular remedy devised by an artitrator, we think that the limited review * * * will stimulate voluntary resort to labor arbitration . . . by guaranteeing to the parties to a collective bargaining agreement that they will find in the arbitrator not a 'philosopher king' but one who will resolve their disputes within the framework of the agreement which they negotiated." 362 F.2d at 682.

CONCLUSION

For the foregoing reasons, this Petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

In the Matter of the Arbitration between
United Automobile Workers, Local 1561
and
Kama Corporation

Case Number: 14 30 0905 75 D

Hearing Date: October 30, 1975

Appearances:
For the Union: Zachary Palega
For the Company: Martin Cohn, Esq.

Contract Clauses:

Management Rights: It is recognized that in addition to other functions and responsibilities which are not otherwise specifically mentioned in this paragraph, the Company has and will retain the sole right and responsibility to direct the operation of the Company . . . to make and apply rules and regulations for production, discipline, efficiency, and safety. It shall also have the right and responsibility to demote, discharge, or otherwise discipline any Employee for just cause (just cause includes but is not limited to absenteeism or violation of other Company rules . . .

Grievance Procedure: Differences arising between the Company and the Union and its membership shall be settled through the following procedure and in the time limits involved . . . In the event that any grievance referred to in the Third Step of the grievance procedure, as provided for herein, remains unsettled following negotiations of the grievance in that meeting, it may be formally referred in writing by either or both parties to the American Arbitration Association for the purpose

of arbitrating the unsettled matter. In order to be valid, such formal written notification to the American Arbitration Association must be made within ten (10) calendar days from the date of the written answer of the Third Step herein . . . In the event such formal referral is not made within this ten (10) calendar day limit, the grievance shall be considered settled on the basis of the last written decision of the Company and not subject to further appeal.

Leaves of Absence: A personal leave of absence will be granted for a period of not more than sixty (60) days upon submission of a written request specifying reasonable cause.

Any Employee who claims to be ill and requests a sick leave of absence from the Company and, in support of this claim presents satisfactory evidence of his incapacitation, shall be granted sick leave not in excess of thirty (30) days. If the illness continues beyond thirty (30) days, sick leave may be extended with the approval of the Company.

Presentation:

This arbitration arises from the termination of Charles Curney, employment date September 21, 1972. The Union contends the termination is a violation of Article VI, Section 3 (sick leave of absence) and seeks as relief reinstatement with the employee made whole. The Employer contends the arbitration is not timely, and, on the substantive issue, that an extension of sick leave beyond thirty days is within the sole discretion of the Company. The position of the Company is that no request was made during the thirty day period for an extension, and even if an extension had been requested, the Company has an absolute right not to grant it. The Company further states that the Grievant was not in such a physical condition as to have been unable to request the extension.

Grievant entered the hospital on May 10, 1975 and was treated for acute viral hepatitis. During his hospital stay he was contacted by two of the firm's employees,

Marie Steber, a record keeper, and a foreman, John Snovitch. He advised both employees of the contemplated discharge from the hospital (5/17/75), and that he would be in a period of recuperation from six to eight weeks. On June 29th following, he reported to the Company, spoke to the same Marie Steber, and presented a medical certificate to the effect that he would be able to return to work on 8/11/75.

On July 1st following, the Employer, Seymour C. Graham, wrote the Grievant the following letter:

> Dear Mr. Curney:
>
> In the Union Contract, a leave of Absence (Article VI) for illness is provided for under Section 3. That Section, however, is limited to thirty (30) days.
>
> Our records show that you ceased working here on May 10th and that no extension had been requested or granted.
>
> Under the terms of the Contract, your employment with this Company has been terminated. Vacation check is enclosed.
>
> Yours very cordially,

On the following July 21st a grievance was filed in behalf of Mr. Curney. The next day, the Employer wrote to members of the Union grievance as follows:

> Local Number 1561, U.A.W.
> Hazelton, Pennsylvania 18201
>
> Attention: Messrs. Andrew Throne, William H. Thomas, Paul Duffy
>
> Gentlemen:
>
> We acknowledge receipt of grievance submitted by the three of you in connection with the Company's action in the matter of Charles Curney.
>
> We are treating your grievance as Step 3, in Grievance Procedure.
>
> Mr. Curney terminated his own employment under the provisions of Article VI, Section 3, of the Contract. Confirmation of this was set forth in our letter to him.

Since the Company's decision herein outlined is made by the Chief Executive of the Company, you may regard this letter as final for whatever steps seem appropriate to you.

Yours very sincerely,

Considerable discussion on the grievance took place between the parties thereafter, including discussion with Company Counsel. On August 5th, after a conversation with Company Counsel, the Union elected to proceed to arbitration.

The Company argues that since arbitration was not invoked within ten days of the third step the arbitration is not timely. In testimony, the parties appear to grant that no third step actually took place.

Q. Mr. Palega: Do you know with whom you had the meeting? With how many?

A. Mr. Graham: Did I testify we had a Step Three Meeting?

Q. Arbitrator: Would you please answer the question to the best of your ability?

A. Mr. Graham: I did not have a Step 3 meeting. To the best of my recollection we had no Step 3 meeting.

In hearing, the Union argues as follows: "He (Curney) was ill. But that doesn't say—it certainly wasn't the intent that if you're ill, you're only able to be ill thirty days and you're going to go in. This is a contagious disease too. Does it mean that you're only to have thirty days and you're through and you can't come back? No that was never the interpretation. That isn't the intent of that clause. And he applied for a leave. In fact, when he came to the plant and he submitted the fact that his doctor supported the fact that he had to be out for another six to eight weeks. Now, it's true the Company has a right—they have a right to terminate an employee if the employee doesn't present any evidence within that thirty-day period. After thirty days, when an employee comes in and has a doctor's certificate stating that he cannot work until August 11th, which the certificate states he would be able to do, then he should be reinstated promptly."

The Company appears to indicate in testimony that the Grievant's absentee record was a consideration in the decision reached by the Company.

Mr. Cohn: I think his work record is relevant.

Arbitrator: In what way is it relevant?

Mr. Cohn: Well, his work record and his periods of illness prior to this time are a relevant consideration to determine what our opinion or decision would be.

Mr. Palega: If he was discharged, I would agree, but he wasn't discharged; he was terminated.

Mr. Cohn: I don't see where there is much difference between termination and discharge.

Mr. Palega: There certainly is.

Mr. Graham referred to the negotiations relative to the sickness leave clause as follows:

This section 3 was negotiated as part of the general pattern of negotiation. There were many revisions and redrafts. I took the position that the mere fact that a man had tenure with us after sixty days did not give him a lifetime job forever short of positive wrongdoing, that there had to be other ways a man could lose his security within the Company. This was one of my positions and I told the negotiator that they could strike from now until Methuselah returned but I just didn't believe that a man had a positive right forever to a job. In other words, the resolution of this Article VI, Section 3, was one of the answers to the position. There was a common consensus while we were negotiating that if a man takes sick, compassion would indicate that he should have up to thirty days to convalesce, that problems incident to his separation from employment during that thirty-day period was one of the burdens that the Company would have to bear, but if the illness continued beyond thirty days—and this point was hashed out very carefully—a number of factors might make the employee unsuitable in the eyes of the Company for further employment. We realized that we could not foresee every contingency but we did agree that there were some places where

> the Company had to have some discretionary provisions and some discretionary powers. The second sentence in Section 3 of Article VI was one of those sentences which was put in after considerable conversation at the demand of the Company, and its language was carefully thought out and worked over.

Mr. Graham further stated his firm had one of the best absentee records in the community and the problem of absenteeism was emphasized because of the continuous nature of the operations. He also stated:

> Curney started his original thirty-day sick leave on or about May 12th. The thirty-day period would have been up on or about June 12th. At that point, since he did not apply for an extension of sick leave, he was terminated.

Opinion and Award:

The issue of timeliness can be dispensed with summarily. Both parties demonstrated laxity in following procedures stipulated in their Agreement. The third step never in fact occurred. The Company did not grant the Union an opportunity to negotiate the grievance. The letter in evidence does not constitute a discharge of such responsibility. I find the grievance before me is arbitrable.

On the substantive issue, the leave of absence for sickness clause mandates a thirty-day grant of sick leave if incapacitation is demonstrated and leaves an extension of sick leave to the discretion of the Company if the illness goes beyond the thirty days. The clause obligates the employee to demonstrate incapacitation in order to acquire the initial thirty-day grant of sick leave and evidence to the effect the disability would extend beyond the initial period, with which the Company makes a decision regarding extension.

The clause does not require the employee to make a formal request of extension beyond the initial thirty-day period. The Grievant's information to the two employees before termination of such period as to the nature of his

contagious disease and the approximate period of recuperation fulfilled his obligation. Moreover, there is no testimony to the effect that the Employer was unaware of this communication. On June 29th, fifty days after his entrance into the hospital, without any response from the Company up to that date, Mr. Curney furnished the precise date of his return.

The Company suggests in its letter to the Grievant that he terminated himself. However, the evidence indicates the Company terminated the employee because of a record of absenteeism. The Grievant did not cease work on May tenth; he was on sick leave.

Moreover, the Company cannot use the sick leave clause to discharge for cause when a more appropriate clause exists for such action. The effect of such use would be to deny the Union its right to request proof of discharge for cause in the grievance procedure. While the sickness clause grants the Company sole discretion in extending sick leave, its language suggests that the right must be exercised within the bounds of illness. Vagueness as to the date of return would conceivably fall within such bounds. The Company position of an absolute right to terminate an employee on sick leave reporting back to work on the thirty-first day of illness would require demonstrable proof.

My award is as follows: the Grievant is reinstated without back pay on the first day of the work week following receipt of this Award.

dated: 12/23/75

/s/ J. A. Raffaele
J. A. Raffaele
Arbitrator

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION

No. 76-269

KAMA CORPORATION

vs.

LOCAL NO. 1561, U.A.W. and INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA

MEMORANDUM AND ORDER

HANNUM, J. JULY 20th, 1976

Presently before the Court are cross motions by the parties. Plaintiff seeks by motion for judgment on the pleadings to vacate an Arbitrator's Award and defendants by motion for summary judgment seek both compliance with the Award and counsel fees. This Court has jurisdiction pursuant to Section 301 of the Labor Management Relations Act, Title 29 U.S.C. § 185.

The parties have stipulated as to the facts of the case. Charles Curney, an employee of the plaintiff, went on sick leave on May 10, 1975. On June 29, 1975, he reported to plaintiff that he intended to return to work on August 11, 1975. On July 1, 1975, plaintiff informed Charles Curney that his employment was terminated.

The defendants filed a grievance on behalf of Charles Curney and pursuant to the Collective Bargaining Agreement which existed between plaintiff and defendants, the grievance eventually proceeded to arbitration. The Arbitrator found in favor of Charles Curney, and by his opinion dated December 23, 1975,

ordered plaintiff to reinstate Charles Curney without reimbursement for back pay, on the first day of the work week following receipt of the Award.

The question to be decided by this Court is whether the Arbitrator exceeded his authority by disregarding the terms of the Collective Bargaining Agreement and by hearing the grievance which was not timely filed.

The scope of judicial review of an arbitration award arising out of an industrial dispute is narrow. The award is valid if it "draws its essence from the collective bargaining agreement," *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, (hereinafter *Enterprise Wheel*), 363 U.S. 593, 597 (1960). The standard set forth in *Enterprise Wheel, supra*, is met when the arbitrator's award can rationally be derived from the collective bargaining agreement and there is no manifest disregard for its provisions. *Ludwig Honold Manufacturing Co. v. Fletcher and United Auto Workers, Local 416*, 405 F.2d 1123, 1128 (3d Cir. 1969). Similarly the Court in *Aloha Motors, Inc. v. I.L.W.U. Local 142*, 530 F.2d 848 (9th Cir. 1976), ruled that an arbitrator's award would be upheld despite a claim that the arbitrator had exceeded his authority by ignoring the terms of the contract, as long as the decision was based on a plausible interpretation of the collective bargaining agreement.

Here, the Arbitrator ruled that the grievance was properly before him even though the defendant, Local No. 1561 U.A.W., did not file for arbitration within the period specified in Article IV of the Collective Bargaining Agreement. He held that the grievance was arbitrable for the reason that the plaintiff did not provide the defendants with an opportunity to negotiate the grievance as required by the Article IV of the Contract and because both parties demonstrated laxity in adhering to specific procedures contained therein.

Plaintiff alleges the Arbitrator disregarded Article VI, Section 3 of the Collective Bargaining Agreement which provided in part, that the plaintiff has the sole power to approve sick leave beyond thirty (30) days. In effect, it is plaintiff's contention that absence due to

illness beyond thirty (30) days, without more, provides sufficient basis to dismiss an employee under this section. The Arbitrator, however, refused to base his decision solely on this provision but instead ruled that Article VI, Section 3 must be read in conjunction with the contract term prohibiting discharge without just cause. He held that the actual reason for Charles Curney's termination was his previous record of absenteeism and that the plaintiff was impermissibly using the sick leave clause instead of the appropriate termination clause. The effect of the plaintiff's action was to deny the defendant, Local No. 1561 U.A.W., its right pursuant to the termination clause of the agreement, to require plaintiff to prove discharge for just cause.

Applying the appropriate standard of review, it cannot be said that the Arbitrator exceeded his authority. His ruling does "draw its essence from the collective bargaining agreement," thus, this is not a case where the arbitrator dispensed "his own brand of industrial justice." *Enterprise Wheel, supra,* at 597.

The defendants' contention respecting their entitlement to attorney fees is without merit. There is no evidence before the Court which indicates that this action was the result of anything but an honest disagreement as to the vaiidity of the Arbitrator's Award. Moreover, plaintiff promptly sought to litigate this dispute, therefore, an award of counsel fees is unwarranted: *Hall v. Cole,* 412 U.S. 1 (1973); *N F and M Corp. v. United Steelworkers of America,* 390 F.Supp. 266 (W.D. 1975), aff'd 524 F.2d 756 (3d Cir. 1975); *International Association of Machinists Lodge 917 v. Air Products and Chemicals, Inc.,* 341 F.Supp. 874 (E.D. Pa. 1972).

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION

No. 76-269

KAMA CORPORATION

vs.

LOCAL NO. 1561, U.A.W. and INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA

ORDER

AND NOW, this 20th day of July, 1976, it is ORDERED that the plaintiff's motion for judgment on the pleadings is DENIED.

It is further ORDERED that defendants' motion for summary judgment is GRANTED in part and DENIED in part. The defendants' motion for enforcement of the Arbitrator's Award of December 23, 1975 is GRANTED. The defendants' request for attorney fees is DENIED.

/s/ JOHN B. HANNUM, J.

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 76-2260

KAMA CORPORATION

Appellant,

vs.

LOCAL NO. 1561, UAW and INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA

Appeal from the United States District Court for the Eastern District of Pennsylvania.
(D. C. Civil No. 76-269)

Submitted Under Third Circuit Rule 12(6)
May 3, 1977
Before: **Aldisert** and **Adams**, *Circuit Judges*, and **Markey**, *Chief Judge.**

JUDGMENT ORDER

After consideration of all contentions raised by appellant, and for the reasons set forth in the district court opinion by The Honorable John B. Hannum, ... F. Supp. ..... (E.D. Pa., July 20, 1976), it is

* Honorable Howard T. Markey, of the United States Court of Customs and Patent Appeals, sitting by designation.

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Appellees' motion to strike appellant's brief is denied.

Costs taxed against appellant.

BY THE COURT,

Circuit Judge

Attest:

/s/ Thomas F. Quinn
Thomas F. Quinn, Clerk
DATED: May 4, 1977

Cc: Mr. Seymour C. Graham

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 76-2260
KAMA CORPORATION

Appellant,

vs.

LOCAL NO. 1561, UAW and INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA

Present: ALDISERT, and ADAMS, *Circuit Judges*, and MARKEY, *Chief Judge.**

ORDER

The mandate previously issued in this case on May 26, 1977, is ordered recalled and a stay of issuing a certified judgment in lieu of mandate is hereby granted until July 14, 1977.

Judge Aldisert would have denied the motion for recall and stay.

BY THE COURT,

/s/ ALDISERT, J.
Circuit Judge

DATED: June 16, 1977

* Honorable Howard T. Markey, Chief Judge of the Court of Customs and Patent Appeals, sitting by designation.

APPENDIX E

Date of this report 7-21-75

Date grievance occurred 7-1-75

Time grievance occurred

Employee(s) aggrieved Mr. Charles Curney

Article VI Section 3

Grievance Unjust Termination of the above named Employee.

Action Requested Reinstatement of above Employee.

Submitted by Andrew Throne, William H. Thomas, Paul Duffy.

Received by /s/ Joseph Grohman

Date received 7-21-75

APPENDIX F

AMERICAN ARBITRATION ASSOCIATION
Case No. 14 30 0905 75 D
UNITED AUTOMOBILE WORKERS, LOCAL 1561
vs.
KAMA CORPORATION

ARBITRATION HEARING
INDEX TO TESTIMONY

AMERICAN ARBITRATION ASSOCIATION
Case No. 14 30 0905 75 D
UNITED AUTOMOBILE WORKERS, LOCAL 1561
vs.
KAMA CORPORATION

TRANSCRIPT OF ARBITRATION HEARING

A hearing was held in the above matter in a meeting room of the Gus Genetti Motor Lodge, Route 309, R. D. Hazleton, Pennsylvania, on Thursday, October 30, 1975, at 10:30 A.M. (E.S.T.)

DR. J. A. RAFFAELE, Arbitrator.

MARTIN D. COHN, ESQUIRE, Counsel for Kama Corporation;

MR. ZACHARY PALEGA, U.A.W. International Representative;

APPEARANCES:

WITNESSES:
MR. JOHN SEIWELL;

ANDREW THRONE;

CHARLES R. CURNEY;

SEYMOUR GRAHAM;

VIRGINIA HINKLE, Standing Commissioner/ Notary Public

(The Witnesses were sworn according to law by the Arbitrator and the case proceeded to hearing.)

BY THE ARBITRATOR:

I am ready for opening statements from either party before proceeeding with testimony.

* * *

CROSS EXAMINATION

BY MR. COHN:

Q. How did they contact you?
A. By phone.
Q. Did they call you in the hospital?
A. Right. I was in the hospital when they called me.
Q. How long after you went in did they contact you?
A. I think Marie contacted me—it was about two days—I think it was the second day I was in. She wanted to find out about the insurance, where to submit the papers, you know, and I told her to send them to the hospital and I told her at that time that I would be off anywhere from six to eight weeks after I left the hospital.
Q. When did your foreman contact you?
A. John, he contacted me—I think that was about two days after Marie did. It was second shift, I recall. He called me to see how I was doing and when I could be expected back at work and I said, "John, I don't really know, anywhere from six to eight weeks, according to the doctor, depending on how I reacted to the medication."
Q. How long have you worked in the plant?
A. I started September 9th—no, September 21, 1972.
Q. And you worked continuously since then?
A. Right.
Q. Did you have any illnesses or accidents in that period of time?

A. Yes.
Q. How many?
A. How many?
Q. If you can remember.
A. A few. I can't really recall.
Q. Was there any time when you were out for more than one day?
A. Yes. The longest I have been out was when I fell at work and I fractured a vertebra in my back for which I was treated.
Q. How long were you off?

BY MR. PALEGA:

Mr. Arbitrator, I object to that kind of questioning. It's irrelevant. It has nothing to do with this.

BY MR. COHN:

I think his work record is relevant.

BY THE ARBITRATOR:

In what way is it relevant?

BY MR. COHN:

Well, his work record and his periods of illness prior to this time are a relevant consideration to determine what our opinion or decision would be.

BY MR. PALEGA:

If he was discharged, I would agree, but he wasn't discharged; he was terminated.

BY MR. COHN:

I don't see where there is much difference between termination and discharge.

BY MR. PALEGA:

There certainly is.

BY THE ARBITRATOR:

Were there extended absences from the plant?

BY MR. COHN:

No, but Mr. Palega has taken the position, at least as I understand it, in his opening remarks that we were

unreasonable. I take the position it isn't a matter of reason. We have an absolute right, but if it's a question of reasonableness, then I think this is relevant because I feel that if we don't have that absolute right, then I think this is relevant.

BY MR. PALEGA:

You have a right to discharge an individual for just cause, just cause. This was not a discharge. This was a termination for not applying for a leave of absence within this period of time. It was not a discharge.

BY THE ARBITRATOR:

The issue as initially constructed in this arbitration was the propriety of termination under the leave of absence clause and the Union so far has addressed itself in its testimony to that issue. The cross-examination is moving in the direction of testimony which was not presented on direct examination, so I sustain the objection of the Union.

* * *

BY MR. COHN:

At this point, since this is a rather informal proceeding, I would like to develop with Mr. Graham the work record of Mr. Curney. However, there is an objection and there is a ruling on it. I just don't want to waste time.

BY MR. PALEGA:

I think the ruling has been rendered previously.

BY THE ARBITRATOR:

May I ask for clarification as to what the Company counsel means by his "work record"?

BY MR. COHN:

His record of injuries, illnesses, prior to May of 1975.

BY THE ARBITRATOR:

Consistent with my previous ruling, I would object to that testimony.

* * *

BY MR. COHN:

I think collectively these can be Company's Exhibit Number 2. I am going to make a statement before I ask the question. It is the position of the Company that the reasonableness of our decision is not an issue.

BY MR. PALEGA:

May I interrupt?

BY MR. COHN:

I'm almost finished.

BY MR. PALEGA:

I thought you had him as a witness. If you're going to ask him questions, I want to cross examine him.

BY MR. COHN:

And you will have every opportunity as you had an opportunity to make a statement of some length. It is the position of the Company that the question of reasonableness is not really relevant. However, to round out the record, I am going to proceed with several additional questions.

Q. Mr. Graham, in making the decision to terminate Mr. Curney, do you feel that the Company's decision was a reasonable one?

A. I do. I feel it was reasonable for many reasons, all of them sound and supportable. I feel it was reasonable because Mr. Curney, who was in my opinion thoroughly conversant with the terms of the contract, was protected by a very adequate union shop committeeman, simply did not move in accordance with the terms of the contract. He simply waived a right that he had and, having waived it and the Company having moved upon his waiver, it seems that he is improper now in asking for reconsideration.

Q. That termination took place some six and a half weeks after he became ill?

A. Correct. I feel the Company was reasonable secondarily because if it should be found that the company in the exercise of its power under the second sentence of Section 3, Article VI, nonetheless acted reasonably in its decision that Curney should not return

to Kama Corporation. Curney's work record was spotty; his attendance record was fair to poor.

BY MR. PALEGA:

I object. That has nothing to do with the instant case. The Doctor ruled before about the work record and yet you insist upon bringing his work record into the picture.

BY THE ARBITRATOR:

Your objection is sustained and I would like that portion of the testimony to be stricken from the record.

BY MR. COHN:

I have no other questions.

* * *

APPENDIX G

RELEVANT STATUTORY PROVISIONS

Section 301 of the Labor Management Relations Act of 1947, as amended, 61 Stat. 156, 29 USC, Section 185:

**Suits by and against labor organizations—
Venue, amount and citizenship**

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

**Responsibility for acts of agent;
entity for purposes of suit;
enforcement of money judgments**

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Jurisdiction

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

Service of process

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

Determination of question of agency

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling. June 23, 1947, c. 120, Title III, § 301, 61 Stat. 156.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976-1977

No. 77-87

KAMA CORPORATION, *Petitioner*

v.

LOCAL NO. 1561, U.A.W. AND INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, *Respondent*

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Solidarity House
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Detroit, Michigan 48214

August 15, 1977

THE LEGAL INTELLIGENCER, 66 NORTH JUNIPER STREET, PHILA., PA. 19107 (215) 561-4050

TABLE OF CITATIONS

IN THE

SUPREME COURT OF THE UNITED STATES

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Agricultural Implement Workers of America, *Respondent*

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

REASONS FOR DENYING WRIT OF CERTIORARI

The Decision Herein Presents Neither a Conflict with the Decision of This Court or Another Court of Appeals, Nor any Important Question of Federal Labor Contract Law.

Petitioner asserts a conflict, but it is with another of the decisions of the court below, which is not, of course, a valid basis for seeking the writ.[1]

1. Petitioner contends, erroneously, at page 13 of the Petition, that the court below, in affirming the District Court, failed to follow its own decision in *Ludwig-Honold Mfg. Co. v. Fletcher,* 405 F.2d

It requires but few words to show that the decision of the court below here is a classical application of this Court's *Enterprise*[2] standard, and so presents neither a conflict with that decision, as petitioner also asserts, nor an important issue of federal labor contract law.

Before the Arbitrator, petitioner contended that the sickness leave clause of the collective bargaining agreement allows it to terminate an employee whose illness goes beyond thirty days, on grounds unrelated to the employee's health. The Arbitrator rejected this interpretation of the clause, ruling instead that, "While the sickness clause grants the Company sole discretion in extending sick leave, its language suggests that the right must be exercised within the bounds of illness." (7a). Finding that the termination was for reasons other than illness, the Arbitrator ruled against petitioner and ordered the employee reinstated, without back pay.

Plainly, the Arbitrator's decision was based upon his interpretation of the sickness leave clause, as the District Court easily found: "In effect, it is plaintiff's contention that absence due to illness beyond thirty (30) days, without more, provides sufficient basis to dismiss an employee under this section. The Arbitrator, however, refused to base his

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Footnote 1—(Continued)
1123 (1969), but instead followed the Ninth Circuit decision in *Aloha Motors, Inc. v. ILWU Local 142*, 530 F.2d 848 (1976). Cert. does not issue to resolve the conflict between two decisions of the same Court of Appeals. Mr. Justice Harlan, *Manning the Dikes*, 13 Record of N.Y.C.B.A. 541, 552 (1958); see *Wisniewski v. United States*, 353 U.S. 901 (1957).

Moreover, the asserted difference between *Fletcher*, *supra*, and *Aloha*, *supra*, on which petitioner relies, is just a difference, not a distinction. In *Fletcher*, the Court said an award must be enforced if based on a "rational" interpretation of the contract, and in *Aloha* the court said "plausible" interpretation.

2. *United Steelworkers v. Enterprise Corp.*, 363 U.S. 593 (1960).

decision solely on this provision but instead ruled that Article VI, Section 3 *must be read in conjunction with* the contract term prohibiting discharge without just cause." (9-10a; emphasis added). Since the Arbitrator's decision was based on his reading of the collective bargaining agreement, the District Court ordered enforcement under *Enterprise*, stating that the Arbitrator's ruling "does 'draw its essence from the collective bargaining agreement' " (10a). The Court of Appeals agreed and affirmed the District Court's decision (12-13a).

In *Enterprise*, this Court, in reversing, said, "The Court of Appeals' opinion refusing to enforce the reinstatement and partial back pay portions of the award was not based upon any finding that the arbitrator did not premise his award on his construction of the contract."[3] Here, the courts below found the Arbitrator's Award premised on his construction of the contract (the sickness leave clause). Manifestly, therefore, there is no conflict with a decision of this Court or another Court of Appeals, and there is no important question of federal labor contract law.

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3. *Id.*, at 598.

CONCLUSION

For the foregoing reasons, it is respectfully urged that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

MARKOWITZ & KIRSCHNER

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August 15, 1977